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FILED
DISTRICT COURT OF GUAM

MAY 27 2008 *JK*

JEANNE G. QUINATA
Clerk of Court

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **TERRITORY OF GUAM**

9 UNITED STATES OF AMERICA,

10 vs.

11 IN HYUK KIM aka DOMINIC,

12 Defendant.

CRIMINAL CASE NO. CR07-00064

**DEFENDANT'S SUPPLEMENTAL BRIEF
PURSUANT TO COURT ORDER, IN
SUPPORT OF APRIL 18, 2008 MOTION TO
SUPPRESS**

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15 **INTRODUCTION**

16 Defendant, IN HYUK KIM, by and through counsel, LUJAN AGUIGUI & PEREZ LLP,
17 supplements the Motion to Suppress filed on April 18, 2008, pursuant to this Court's order.
18 Defendant asserts that the government should be ordered to disclose to the defense statements he
19 purportedly made to agents beginning on July 31, 2007, which the government has represented to
20 the Court were subject to Rule 11 application.

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23 **FACTS**

24 Defendant incorporates the facts stated in his April 18, 2008 Motion to Suppress.
25 Defendant submits the following additional facts: Defendant purportedly made statements to
26 agents beginning on or about July 31, 2007 after speaking with his attorney, John Gorman, Esq.
27 At a previous motions hearing, in response to the Defendant's request for disclosure of records
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1 and reports concerning these statements, the government responded by representing to the Court
2 that these statements were inadmissible and were considered a Rule 11 proffer. Defendant has
3 reasserted his request to discover these records. The government has objected. Defendant needs
4 this discovery for the pending Motion to Suppress and for pre-trial and trial preparations. More
5 importantly, government has an obligation to provide it to the defense.
6

7 8 ARGUMENT

9 Defendant needs this discovery for the pending Motion to Suppress and for pre-trial and
10 trial preparations. More importantly, government has an obligation to provide it to the defense.

11 The prosecutor has a duty to disclose, at least upon request, all evidence favorable to the
12 Defendant which is "material to either guilt or to punishment." *Brady v. Maryland*, 373 U.S. 83,
13 87 (1963). Defendant has requested disclosure of statements purportedly made by him to
14 government agents. These statements would be material to guilt or punishment. These statements
15 are also discoverable to enable Defendant to impeach agents, who may testify to other statements
16 made by Defendant, which may be inaccurate, misleading, incorrect, or out of context.
17

18 Federal Rule of Criminal Procedure Rule 16(a)(1)(A) provides that, upon a Defendant's
19 request, the government must disclose to the Defendant the substance of any relevant oral
20 statement made by the Defendant, before or after arrest, in response to interrogation by a person
21 the Defendant knew was a government agent if the government intends to use the statement at
22 trial. The Defendant has requested disclosure from the government of statements he purportedly
23 made, whether written or oral, to government agents, before or after his arrest.
24

25 Federal Rule of Criminal Procedure, Rule 16(a)(1)(B) provides that, upon a Defendant's
26 request, the government must disclose to the Defendant, and make available for inspection,
27

1 copying, or photographing, all of the following: (i) any relevant written or recorded statement by
2 the Defendant if: the statement is within the government's possession, custody, or control; and,
3 the attorney for the government knows-or through due diligence could know-the statement exists;
4 (ii) the portion of any written record containing the substance of any relevant oral statement made
5 before or after arrest if the defendant made the statement in response to interrogation by a person
6 the Defendant knew was a government agent; and (iii) the Defendant's recorded testimony before
7 a grand jury relating to the charged offense.
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10 **CONCLUSION**

11 Defendant respectfully requests that the government be ordered to disclose statements
12 purportedly made to agents which the government has represented are subject to Rule 11
13 application. Defendant has requested disclosure of this discovery; the government has objected to
14 disclosure; the government has failed to make disclosure as requested; yet, the government is
15 required to do so.
16

17 Dated this 27th day of May, 2008.

18 **LUJAN AGUIGUI & PEREZ LLP**

19
20 By: 

21 **PETER C. PEREZ, ESQ.**

22 *Attorneys for Defendant In Hyuk Kim aka Dominic*

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